Federal Court  Cour fédérale

Date: 20101210

Docket: IMM-1066-10

Citation: 2010 FC 1277

Ottawa, Ontario, December 10, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

RAMNARESH KATWARU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a citizen of Guyana. He was granted permanent resident status in Canada in May 1992. In February 1996, he was charged with manslaughter in connection with his infant son's death. In August 2002, he was convicted on that charge and sentenced to six years of imprisonment, with credit for 17 months of pre-trial custody. In April 2003, he was convicted of assaulting his wife and was sentenced to three months of imprisonment to be served concurrently with his manslaughter sentence.

[2] After he was subsequently found to be inadmissible to Canada, he submitted an application for permanent residence on humanitarian and compassionate (H&C) grounds under section 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[3] In February 2010, his application was rejected by the Director, Case Determination, of the Case Management Branch of Citizenship and Immigration Canada.

[4] Mr. Katwaru seeks to have the Director's decision set aside on the basis that the Director erred by:

a. placing undue weight on one factor to the exclusion of all others in her assessment;

b. applying the wrong test in her assessment; and

c. unreasonably assessing the evidence before her.

[5] For the reasons that follow, this application is dismissed.

I. Background

[6] In August 1995, Mr. Katwaru and his former wife had a son who was born premature. After a four-month stay in the hospital, he was discharged. Following the receipt of information from his former wife that he was handling the child "in a rough manner," an investigation was commenced with the Children's Aid Society. A High Risk Infant Care Nurse was then assigned to the family. However, the intervention of professionals who regularly visited the home was not sufficient to stop

Mr. Katwaru's systematic abuse of his son. In February 1996, at the age of five months, his son died.

[7] It was later determined that the cause of death was very severe swelling of the brain, likely caused by being severely shaken back and forth or his head and neck being rotated. There were also bruises to the baby's brain that were consistent with the baby having been "swung against something or hit with something." In addition, there were injuries that were consistent with repeated abuse.

[8] Mr. Katwaru was initially convicted of manslaughter in 1998. He was also initially convicted around that time of uttering threats and assault upon his former wife. After those convictions were set aside as a result of erroneous jury instructions, he was again convicted of manslaughter in 2002 and of assault in 2003.

[9] In April 2003, he was found to be inadmissible on grounds of criminality. A removal order was issued against him, however, it was stayed pending the completion of his sentence.

[10] In January 2005, he submitted his H&C application. This was followed in June 2005 with an application for a pre-removal risk assessment (PRRA). Pursuant to paragraph 112(3)(b), he was found to be ineligible for a PRRA, on grounds of serious criminality. In May 2006, this Court dismissed his application for judicial review of that decision.

[11] On February 1, 2007, Mr. Katwaru was arrested and detained for a removal to Guyana that was scheduled to take place on February 10, 2007. The following day, an officer with the Canadian

Border Services Agency (CBSA) refused to defer his removal. A stay of removal was then granted by this Court pending the determination of his application for leave and for judicial review of that decision.

[12] In September 2008, Mr. Katwaru's application for judicial review of the CBSA Officer's refusal to defer his removal was granted.

II. The Decision under Review

[13] In February 2010, Mr. Katwaru was informed that the Director had made a negative decision on his H&C application.

[14] In the first five pages of her lengthy decision, the Director reviewed the background and circumstances of Mr. Katwaru's immigration file, the circumstances surrounding his son's death and his subsequent convictions, and the evidence regarding his rehabilitation.

[15] The Director then turned to her assessment of the relevant H&C considerations. The Director began this assessment by quoting a number of passages from the 2008 decision of Justice Heneghan to grant judicial review in respect of the CBSA officer's refusal to defer Mr. Katwaru's removal, in February 2007. These passages included Justice Heneghan's conclusion that the CBSA officer had failed to fully consider all of the evidence before her, including Mr. Katwaru's fears of being at risk if returned to Guyana.

[16] The Director then discussed at length Mr. Katwaru's family ties in Canada and the adverse impact that his removal would have on them, particularly on his current wife, who depends on him financially, emotionally and physically.

[17] In addition, the Director discussed Mr. Katwaru's degree of establishment in Canada and concluded that he is well established financially and in the community in which he lives.

[18] The Director then turned to a detailed assessment of the risks that Mr. Katwaru alleged he would face if required to return to Guyana. These risks were grouped into the following four categories:

a. his ex-wife's parents/family, who remain in Guyana, will target him for ill-treatment to avenge the death of their grandchild;

b. the Guyanese public will target him for ill-treatment based on the negative media coverage of his crime;

c. the Guyanese government will target him because of his status as a criminal deportee; and

d. he would face various generalized risks, due to the high rate of crime in Guyana, his particular vulnerability as a returning citizen from abroad, the insufficiency of state protection, and tensions between the Indo- and Afro-Guyanese ethnic communities.

[19] After taking note of Mr. Katwaru's written submissions and a statutory declaration that he provided detailing reports from his uncle regarding death threats being made against Mr. Katwaru in Guyana, the Director quoted a sworn statement from Mr. Katwaru's friend that elaborated upon the threats that he had personally heard being made towards Mr. Katwaru. She observed that this statement was vague and not supported by corroborative evidence. Ultimately, she concluded that there was insufficient evidence that (i) Mr. Katwaru's ex-wife's family would carry out any threats made against him should he return to Guyana; or (ii) he would even be known or recognized should he establish himself in another part of Guyana.

[20] As to the Guyanese public, the Director gave little weight to various anonymous comments that had been posted on the Internet. She determined that there was no support for Mr. Katwaru's claim that they were posted by persons in Guyana and she gave the comments little weight as evidence that the Guyanese public would be in any way galvanized into actively tracking his case and following through with any vigilante acts of street justice. She also observed that it would be open to Mr. Katwaru to bring a motion for confidentiality pursuant to Rule 151 of the *Federal Court Rules*, if he could demonstrate a need for confidentiality, notwithstanding the public interest in open and accessible court proceedings. In concluding this part of her assessment, the Director stated that she was satisfied that there was insufficient evidence that the media attention Mr. Katwaru has received to date would jeopardize his safety should he now be returned to Guyana.

[21] With respect to his status as a criminal deportee, the Director acknowledged his counsel's submissions that there is legislation in Guyana that would allow the police to monitor him and that the broad powers in that legislation are open to abuse by those who enforce them. However, she

found that the reported possibility of such abuse was speculative and that Amnesty International's subsequent reports make no mention of those broad powers actually having been abused. She also noted that in more recent open source country condition materials there was little evidence of any police monitoring of criminal deportees. After quoting a U.S. article regarding the treatment of criminal deportees in Guyana, the Director concluded that there was not sufficient evidence to demonstrate that Mr. Katwaru would be monitored or, if monitored, that he would be inappropriately treated by Guyanese authorities upon his return.

[22] In summary, regarding Mr. Katwaru's claimed personal risks, the Director concluded that there was not sufficient evidence that he would face any such risks if he returned to Guyana.

[23] Turning to the generalized risks that were alleged by Mr. Katwaru, the Director noted that Indo-Guyanese people make up half the population, and that documentary evidence indicated that while many Indo-Guyanese people claim that they are not adequately protected by Afro-Guyanese police officers, Afro-Guyanese officers claim that the police carry out the agenda of the primarily Indo-Guyanese government.

[24] The Director then found that the risks alleged by Mr. Katwaru in respect of high rates of crime, inadequate policing, and racial tensions are inconveniences experienced by all residents of Guyana, and are not specific to Mr. Katwaru. She quoted from the travel advisories produced by Mr. Katwaru, and determined that there was insufficient evidence to demonstrate that these factors would directly impact Mr. Katwaru, especially if he is quick to readopt Guyanese habits as outlined in the travel advisories.

[25] In concluding, the Director identified the following factors as positive considerations in favour of granting his H&C application: “the strong family connections Mr. Katwaru has in Canada, the length of his residency in Canada and his commendable efforts to rehabilitate himself and improve his education.” She also found that he does not represent a danger to the public and he appears to be unlikely to re-offend.

[26] However, she proceeded to state that “the crime he committed weighs heavily in the balance against these positive factors. A child’s death was caused by Mr. Katwaru. The record demonstrates that he was warned of the consequences of shaking a baby but that this did not stop him from continuing to abuse the baby.”

[27] She also noted that Mr. Katwaru is unlikely to face any real risks to his person if returned to Guyana, and that the possibility remains that his wife may accompany him to Guyana and that his other family members may visit him in Guyana.

[28] Finally, she noted that Mr. Katwaru will be eligible to apply for a pardon in the normal manner as of March 2012, and if granted a pardon, his wife could sponsor him as a spouse and he would be eligible to return to Canada.

[29] Based on the foregoing, the Director concluded that there are insufficient H & C considerations to warrant granting a waiver of Mr. Katwaru’s criminal inadmissibility. She added that she was equally satisfied that the issuance of a Temporary Resident Permit is not justified in the circumstances.

III. Standard of review

[30] The issues that have been raised by Mr. Katwaru are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 51-56; *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at para. 18). In short, the Director's decision to reject his H&C application will stand unless it is not within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). In this regard, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 59).

IV. Motion for Confidentiality

[31] On November 2, 2010, Mr. Katwaru filed a motion for an order sealing the Court record in this case pursuant to Rules 151 and 152 of the *Federal Courts Rules*, SOR/98-106. In the alternative, Mr. Katwaru has requested that his name in the style of cause be varied to "X.X."

[32] Rule 151 provides as follows:

Motion for order of confidentiality	Requête en confidentialité
151. (1) On motion, the Court may order that material to be filed shall be treated as confidential.	**151.** (1) La Cour peut, sur requête, ordonner que des documents ou éléments matériels qui seront déposés soient considérés comme confidentiels.
Demonstrated need for confidentiality	Circonstances justifiant la confidentialité
(2) Before making an order under subsection (1), the Court must be satisfied that the material	(2) Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit

should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.	être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l'intérêt du public à la publicité des débats judiciaires.

[33] Mr. Katwaru acknowledges that (i) a confidentiality order will not be granted unless it can be justified, and (ii) the onus is on him to provide such justification.

[34] He states that a confidentiality order in this case is justified because there is clear and cogent evidence of the death threats that were made against him from persons in Guyana, as a result of the publication of Justice Heneghan's 2008 decision mentioned above.

[35] He asserts that if the Court record in respect of this application is not sealed and kept confidential, or, in the alternative, if his name is disclosed in the full decision rendered in this application, he will face death threats and reprisals once again.

[36] In support of his motion, Mr. Katwaru provided copies of news articles published in newspapers that are circulated in Guyana. Those articles were published over the period October 5, 2008 to October 9, 2008, following Justice Heneghan's decision. They simply reported the facts with respect to Mr. Katwaru's convictions and Justice Heneghan's disposition of his application.

[37] Mr. Katwaru also provided Internet postings anonymously made during the period October 6, 2008 to October 13, 2008. It is not immediately apparent to me that any of those postings were made by persons located in Guyana. It is evident that many of them were made by persons in Canada and the U.S. That said, it is possible that some of them were made by persons in Guyana.

However, it would be purely speculative to infer, based on the content of those postings, that Mr. Katwaru would face an increased risk to his personal safety if his motion were not granted and if he is ultimately removed to Guyana.

[38] The two-prong test applicable to a motion for an order of confidentiality pursuant to Rule 151 of the Rules was established by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at 543-545. There, the Supreme Court stated that confidentiality orders under Rule 151 should only be granted when:

> (i) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> (ii) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

With respect to the first prong of the test, the Supreme Court added that:

> (i) the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question;
>
> (ii) in order to qualify as an "important commercial interest", the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in maintaining confidentiality; and
>
> (iii) the Court must consider not only whether reasonable alternatives to a confidentiality order are available, but must also restrict the order as much as is reasonably possible while preserving the commercial interest in question.

[39] I am satisfied that Mr. Katwaru fails both prongs of the *Sierra Club* test. As to the first prong, Mr. Katwaru has not demonstrated that the risk alleged is real and substantial. Far from being well grounded in the evidence and involving a serious threat to his interest in his personal safety, the evidence that he adduced in support of this motion is extremely weak and purely speculative in nature. In addition, I am unable to identify any public interest in maintaining the confidentiality of the entire Court file in this proceeding, particularly given that the information in question is already in the public domain, or in granting his alternative request to substitute his name in the style of cause to "X.X."

[40] As to the second prong of the test, it follows from the foregoing that the salutary effects that would be associated with granting the confidentiality order sought by Mr. Katwaru would be minimal, at best. They are not sufficient to outweigh the deleterious effects that would be associated with granting the order, including the effects that the order would have on the right to free expression, which in this context includes the public interest in open and accessible court proceedings (*Sierra Club*, above, at 550-551).

[41] The confidentiality order sought by Mr. Katwaru also would not meet a number of the important pre-conditions to the granting of such an order that were identified by Robertson J.A. in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2000] 4 F.C. 426 (C.A.), at para.13, when he stated:

> In my opinion the following criteria can be reasonably viewed as conditions precedent to the issuance of a confidentiality order in cases where a party is seeking to prevent the disclosure of information: (1) the information is of a confidential nature as opposed to facts which one would like to keep confidential; (2) the

> information for which confidentiality is sought is not already in the public domain; (3) on a balance of probabilities the party seeking the confidentiality order would suffer irreparable harm if the information were made public; (4) the information is relevant to the legal issues raised in the case; (5) correlatively, the information is "necessary" to the resolution of those issues; (6) the granting of a confidentiality order does not unduly prejudice the opposing party; and (7) the public interest in open court proceedings does not override the private interests of the party seeking the confidentiality order. The onus in establishing that criteria one to six are met is on the party seeking the confidentiality order.

[42] The first two conditions in the foregoing list are not met because the alleged harmful information, namely, Mr. Katwaru's conviction for manslaughter and the circumstances surrounding the death of his son, is not of a confidential nature and has been in the public domain since 1998, when Mr. Katwaru was first convicted for manslaughter. The third condition in the foregoing list is also not met because, as discussed above, Mr. Katwaru has not established that he will suffer irreparable harm if the order he seeks is not granted. Indeed, essentially the same risks were considered and rejected by the PRRA Officer who rejected his PRRA application in 2005. In 2006, this Court dismissed Mr. Katwaru's application for judicial review of that decision. Finally, as noted above, the public interest in open court proceedings outweighs the weak private interests that Mr. Katwaru is seeking to protect.

[43] Accordingly, Mr. Katwaru has not satisfied the tests established by the Supreme Court of Canada and by Robertson J.A. for the granting of a confidentiality order under Rule 151. Mr. Katwaru's motion will therefore be dismissed.

V. Analysis

A. *Did the Director err by placing undue weight on one factor to the exclusion of all others?*

[44] Mr. Katwaru submits that the Director erred by overemphasizing his criminality. He asserts that his application should be distinguished from those made by persons who have never received permanent resident status in Canada. In this case, he states that he was applying for equitable relief, and that therefore different factors are relevant to the assessment. In particular, he submits that the factors to be considered are those that were established in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4, at para. 4, which were endorsed by the Federal Court of Appeal in *Chieu v. Canada (Minister of Citizenship and Immigration.)*, [1999] 1 F.C. 605 (C.A.), at para. 18. Those factors are:

1) the seriousness of the offence leading to the deportation order;
2) the possibility of rehabilitation and the risk of re-offending;
3) the length of time spent in Canada and the degree to which the applicant is established;
4) the family in Canada and the dislocation to family that would be caused by deportation;
5) the support available to the applicant within the family and the community; and
6) the degree of hardship that would be caused to the applicant by his return to the country of nationality.

[45] Mr. Katwaru further notes that in *Chieu*, above, the remorsefulness of the applicant was identified as another relevant factor to consider.

[46] In addition, he submits that section 11.4 of Immigration Manual IP-5, entitled *Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* ("IP-5"), issued by Citizenship and Immigration Canada (CIC), identifies additional factors to be considered when dealing with known inadmissibility on grounds such as a prior criminal conviction. Such factors include the type of criminal conviction, the length of time since the conviction, the sentence received, whether the conviction was the result of an isolated incident, and any other pertinent information about the circumstances of the crime.

[47] In this case, Mr. Katwaru submits that the Director identified several positive factors that weighed in favour of granting his application. These included: "the strong family connections Mr. Katwaru has in Canada, the length of his residency in Canada and his commendable efforts to rehabilitate himself and improve his education." In addition, the Director found that he does not represent a danger to the public and appears to be unlikely to re-offend. She also acknowledged Mr. Katwaru's strong familial bonds in Canada and the adverse impact that his removal would have on his family, particularly his current wife, who depends on him financially, emotionally and physically. Moreover, she acknowledged his submissions with respect to the high rate of crime, inadequate policing and racial tensions in Guyana.

[48] Against all of the above-mentioned considerations that weighed in favour of granting his application, Mr. Katwaru asserts that the only negative factors identified by the Director were the nature of the crime he committed and her conclusion that he would not likely face any real risk to his person if returned to Guyana.

[49] Based on the foregoing, he submits that the Director was unduly influenced by his past conviction.

[50] Mr. Katwaru acknowledges the seriousness of the offence. However, he notes that the offence occurred over 14 years ago, that he has served his sentence, that he has rehabilitated himself, that he is unlikely to re-offend, that he has close ties in Canada, and that he is a productive member of society. He submits that if his application is to be refused, he is entitled to an explanation as to why it should be refused, other than the mere existence of the offence.

[51] Mr. Katwaru asserts that the Director was given discretion in this manner, and discretion would not have been given if there were not circumstances in which it can be exercised positively, despite the existence of criminality. Relying on *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 380, at paras. 11-16, and *Lau v. Canada (Minister of Employment and Immigration)*, [1984] 1 F.C. 434, he submits that to base a decision solely on his prior criminality, to the exclusion of all other factors, is to give undue influence to that single factor and thereby commit a reviewable error.

[52] I disagree with Mr. Katwaru's position.

[53] In *Pushpanathan*, above, at para. 15, Sharlow J. (as she then was) determined that the adverse decision on the applicant's appeal from his deportation order had been erroneously based on "the single fact of the commission of the offence." In that case, the offence involved drugs and the applicant was sentenced to eight years imprisonment in 1988 and released on parole in 1991. In *Lau*, above, which involved the issuance of a deportation order on other grounds, the Federal Court

of Appeal held that if Parliament had intended the breach of the *Immigration Act, 1976*, S.C. 1976-77, c. 52, to be a dominating and determining factor, then there would have been no point in conferring discretion on the decision-maker pursuant to subsection 32(6) of that legislation.

[54] In the case at bar, the facts are distinguishable. The Director did not rely solely on the single fact of the commission of an offence described in the IRPA. Rather, she relied on the fact that Mr. Katwaru was convicted of manslaughter in connection with a child's death, after having been "warned of the consequences of shaking a baby." She further noted that "this did not stop him from continuing to abuse the baby." Earlier in her decision, she quoted additional aggravating circumstances that were identified by Justice LaForme in his Reasons for Sentence. Those circumstances included the fact that the case involved "systematic abuse that finally ended up with this tragic event of baby shaking death," as opposed to a single impulsive act. After describing the brutality of that systematic abuse, Justice LaForme called the offence "one of the most serious crimes under our laws against one of the most vulnerable members of our society."

[55] In the presence of these aggravating circumstances, it was entirely open to the Director to exercise her discretion to reject Mr. Katwaru's application on the basis that there were insufficient humanitarian and compassionate considerations to warrant granting a waiver of his criminal inadmissibility.

[56] Indeed, this conclusion was further supported by her determination that "Mr. Katwaru is unlikely to face any real risks to his person if returned to Guyana."

[57] Regarding the six factors identified in *Ribic*, above, while four weighed in favour of granting Mr. Katwaru's application, the first and sixth supported the conclusion reached by the Director. As I have noted above, there were also serious aggravating circumstances, some of which are contemplated by section 11.4 of IP-5.

[58] Given the "highly discretionary and fact-based nature" of the balancing process contemplated by s. 25 of the IRPA (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 61), the Director's decision should be accorded "considerable deference" (*Baker*, at para. 62).

[59] Having identified and assessed the various factors weighing in favour of Mr. Katwaru's application, it was reasonably open to the Director to conclude that the seriousness of the offence and the aggravating circumstances that she identified, either directly or indirectly in passages quoted in her decision, were such that there were insufficient H&C considerations to warrant granting a waiver of his criminal inadmissibility. It is not the role of the courts to re-examine the weight given to different factors by the Minister or his delegates under s. 25 of the IRPA (*Canada (Minister of Citizenship and Immigration) v. Legault*, 2002 FCA 125, at para. 11) .

[60] In my view, the Director's decision was certainly well within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para. 47), particularly given the "highly discretionary and fact-based nature" of the decision (*Baker*, above, at para. 61). For the reasons I have explained, that decision also was transparent, intelligible and appropriately justified.

[61] There may well be situations in which the factors favouring a positive decision under s. 25 of the IRPA may outweigh the seriousness of the offence that led to the deportation order in question. Conversely, there may well be situations in which the seriousness of the offence in question, in and of itself, will outweigh the positive factors identified by the applicant and accepted by the Minister or his delegate. Indeed, had there not been additional aggravating circumstances in this case, it may have been a good example of the latter type of situation.

[62] Ultimately, a decision made on an H&C application will depend on the weight attributed to the positive and negative factors, rather than on the number of those factors, having regard to the priority given to security in paragraph 3(2)(f) of the IRPA, and to the fact that "[T]his objective is given effect by … removing applicants with [criminal] records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada" (*Medovarski v. Canada (Minister of Citizenship and Immigration*), [2005] 2 S.C.R. 539, at para. 10). As the Federal Court of Appeal observed in *Canada (Minister of Public Safety and Emergency Preparedness) v. Cha*, 2006 FCA 126, at para. 24, "Parliament has made it clear that criminality of non-citizens is a major concern." The decisions in both *Medovarski* and *Cha* post-date the decisions relied upon by Mr. Katwaru.

[63] In the case at bar, there were a significant number of factors that weighed in favour of a positive determination of Mr. Katwaru's H&C application. However, on the whole, they were not materially different from the types of factors that are routinely identified by applicants in the H&C cases that come before this Court. Given the seriousness of the offence and the aggravating factors identified or recognized by the Director, it was not unreasonable for the Director to reject

Mr. Katwaru's application, particularly having regard to the objectives of the IRPA, as discussed in *Medovarski* and *Cha*, above.

[64] The standard to be met to obtain a grant of exemption from the requirement to apply for permanent residence from outside of Canada is a high threshold. The applicant bears the onus of meeting that threshold (*Bui v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 816, at paras. 11 and 12). In this case, Mr. Katwaru failed to do so.

B. *Did the Director err by applying the wrong test in assessing the H&C application?*

[65] Mr. Katwaru submits that the Director erred in her assessment by applying a "real risk to life" test, as opposed to one of "unusual and undeserved, or disproportionate hardship." He further asserts that while generalized risk cannot be considered in a PRRA assessment, it is appropriate to consider such risk in assessing an H&C application. Relying on *Ramirez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1404, at para. 5, he maintains that there may well be risk considerations that are relevant to an H&C application, which fall below the higher threshold of risk to life or cruel and unusual treatment or punishment, which is the focus in a PRRA application. The implication is that the Director did not consider such general or lower risk considerations in her assessment.

[66] On a close reading of the Director's decision, I am unable to agree that she applied the wrong test in her assessment. I recognize that, in articulating her decision, she did not explicitly refer to the established test of "unusual and undeserved, or disproportionate, hardship." However, she explicitly addressed and assessed the factors that are typically evaluated in H&C applications, namely, the extent to which Mr. Katwaru has become established in Canada; his family and other

social ties in Canada; the interests of his child relatives (he doesn't have any children of his own); and the impact that being deported would have on him and his family. In addition, she explicitly acknowledged the "hardship" that Mr. Katwaru's wife would likely suffer, emotionally, physically and financially, should she be parted from Mr. Katwaru. She also explicitly acknowledged the "hardship of a permanent separation from family members," which he would face if deported from Canada.

[67] With respect to the general risks identified by Mr. Katwaru, the Director did in fact explicitly address those risks over the course of almost two pages of her decision. Ultimately, she concluded: "No doubt these factors represent serious inconveniences, but there is insufficient evidence before me to demonstrate that these factors would directly impact Mr. Katwaru especially if he is quick to readopt Guyanese habits as outlined in the travel advisories." In my view, this conclusion is simply another way of stating that these general risks would not likely present any hardship for Mr. Katwaru, let alone "unusual and undeserved, or disproportionate" hardship.

[68] Regarding the personalized risks identified by Mr. Katwaru, the Director concluded that there was not "sufficient evidence that Mr. Katwaru would face any personalized risks if he returned to Guyana, based on being a criminal deportee, because of the media coverage of his criminal case in Guyana, or at the hands of his ex-wife's family." Once again, in my view, this is simply another way of stating that these personalized risks would not likely present any hardship for Mr. Katwaru.

[69] In short, it is clear from a contextualized reading of the Director's decision that she reached "the conclusion that the Applicant would not suffer unusual and undeserving, or disproportionate hardship since there was no objective evidence of personal risk" (*Pannu v. Canada (Minister of*

Citizenship and Immigration), 2006 FC 1356, at para. 37; *Akinbowale v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1221, at para. 21; *El Doukhi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1464, at para. 27).

[70] In my view, the Director did not err by applying the wrong test in her assessment. Her failure to explicitly articulate her conclusion in terms of "unusual and undeserved, or disproportionate, hardship" was not unreasonable.

[71] The Director's use of the terms "risk" and "personalized risk," rather than the term "hardship," in various places appears to have simply resulted from an attempt to use terms employed in "the updated risk submissions" dated May 11, 2007 and October 28, 2008, submitted by Mr. Katwaru and referred to in his letter to PRRA Officer A. Dello, dated January 5, 2010, in which a number of those alleged "risks" were repeated.

C. *Did the Director err by unreasonably assessing the evidence?*

[72] Mr. Katwaru also submits that the Director erred by making a number of unreasonable assessments of the evidence before her.

[73] Specifically, Mr. Katwaru notes that the Director found that his friend's account of threats that he received regarding the Applicant were vague, lacked detail, and were not supported by the evidence. He asserts that this conclusion ignored his statutory declaration that he had received threats and ignored his uncle's statement that his former mother-in-law had made threats against him.

[74] I disagree. At page 9 of her decision, the Director explicitly quoted from Mr. Katwaru's statutory declaration with respect to those threats. After then quoting at length from his friend's sworn statement, she reasonably concluded that the statement provided few details, was vague and was not supported by corroborative evidence. In my view, it was entirely reasonable for the Director to conclude that the statement from Mr. Singh did not provide "sufficient substantiation for the contention that Mr. Katwaru would be threatened or targeted by his ex-wife's family or other unknown individuals."

[75] Mr. Katwaru further submits that it was unreasonable for the Director to conclude that he could establish himself elsewhere in Guyana. He asserts that the Director essentially concluded that he had an internal flight alternative (IFA) in Guyana, but she failed to specify where he could relocate within Guyana.

[76] In my view, it was not unreasonable for the Director to make this observation on the facts of this particular case, particularly given that she explicitly concluded that there was insufficient evidence that (i) he would face any personalized risks if he return to Guyana, or (ii) that the generalized risks identified by him would represent more than serious inconveniences.

[77] Mr. Katwaru also submits that the Director trivialized the seriousness of his situation when she stated that she had given "the anonymous comments [in the Internet postings] little weight as evidence that the Guyanese public would be in any way galvanized into actively tracking his case, keeping the photo of Mr. Katwaru handy should he be deported and following through with any vigilante acts of street justice."

[78] I disagree. The Director was simply drawing a reasonable conclusion, based on the content of those postings and the fact that it is not immediately apparent whether any of those postings were made by people from within Guyana. Indeed, as I have noted above, many of those postings appear to have been made by people in Canada and the United States.

[79] Next, Mr. Katwaru submitted that the Director's conclusion that CIC and the CBSA are prevented by privacy legislation from making public any developments is erroneous. He notes that CIC and CBSA have issued press releases regarding certain people's deportations in the past. In my view, this comment did not render the Director's decision unreasonable, particularly given the significant publicity that has already been given to Mr. Katwaru's conviction and the circumstances surrounding his son's death.

[80] In addition, Mr. Katwaru submits that the Director improperly found that he could avoid generalized risks if he adopted "Guyanese habits as outlined in the travel advisories." He submits that it was perverse for the Director to apply precautions meant for tourists to a person who would be residing there permanently.

[81] In my view, this observation did not materially impact on the Director's conclusion that the generalized risks identified by Mr. Katwaru would represent more than serious inconveniences. As reflected in the observations made by the Director in the same paragraph in which she made her concluding statement on generalized risks, that conclusion was reached based on (i) the fact that there was insufficient evidence to demonstrate that those risks would directly impact upon Mr. Katwaru; and (ii) the evidence that Mr. Katwaru and his family members have made trips back to

Guyana, thereby suggesting that they felt that conditions in Guyana are not as risky as he suggested in his H&C application.

[82] Finally, Mr. Katwaru submits that the Director erred by suggesting that his wife could accompany him to Guyana. He asserts that this decision was made without consideration of his wife's medical condition and her need for ongoing treatment.

[83] That comment by the Director was made after she had summarized the positive and negative considerations that provided the basis for her decision. The comment was made in the context of discussing a possible partial solution to reduce the "certainty of the hardship" that the Director found would be experienced by Mr. Katwaru, his wife and his other family members, should he be returned to Guyana. In this context, I am satisfied that this comment did not render her decision, as a whole, unreasonable.

[84] In summary, I am satisfied that the various conclusions, findings and observations made by the Director and alleged to have been unreasonable by Mr. Katwaru were not, individually, or collectively, unreasonable. As previously noted, I am satisfied that the decision reached by the Director was well within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47). For the reasons I have explained, that decision also was transparent, intelligible and appropriately justified.

VI. Conclusion

[85] The application for judicial review is dismissed.

[86] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review, as well as the Applicant's motion for a confidentiality order pursuant to Rule 151 of the *Federal Courts Rules*, are dismissed.

"Paul S. Crampton"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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